

Banana Claims

(Who is the "Sucker"—
Now?)

See Harry T. Mills of the
Past Due Agency, 848 Kaahu-
manu Street, for the collec-
tion of claims; the TIME is
ripe—even if the FRUIT was
unlawfully destroyed.

BELT ROAD

APPEAL

(Continued from Page 1)

quently there can be no assumption from the fact that these contracts were awarded to Wilson, that the various officers and boards considered Wilson to be a responsible bidder. Only one thing can be presumed, and that is the fact that Wilson was the lowest bidder and furnished the required bond.

"Consequently we contend that the petitioner has failed to establish the fact that he was a bidder of sufficient responsibility and ability to be entrusted with the contract in question."

Failed to Prove.

Coming down to the matter of any attempt being made by the petitioner to prove that the commission had acted fraudulently or corruptly, the brief continues: "There was no attempt made by the petitioner to bring out any facts occurring either before the opening of bids or after the awarding of the contract which would tend to show any corrupt or dishonest action on the part of the commission or of any of its members."

Referring to the question of Wilson's being given a hearing, the brief quotes the conversation at the meeting of the commission in which Mayor Fern said, after a motion had been made to award the contract to the Lord-Young Engineering Company, Limited, when that commissioner said: "Don't you think that it would be better to give all the bidders a chance to be heard with regard to their responsibility?" Commenting on this the brief goes on: "It will be noted upon examination of the petition for injunction that it is alleged that the commission refused to grant Wilson a hearing as to his responsibility, although it was asked and demanded by him. An examination of the transcript of the evidence in this case will show that this allegation is not sustained except in so far as this statement of Fern's just alluded to. That was the only suggestion of a personal hearing for the bidders which was made, and not even Mayor Fern's statement could have given any knowledge to the commission of the fact that Wilson had asked Fern to have the commission give him a hearing. Certainly none of the members of the commission had any reason to believe from Fern's statement that Wilson had demanded from Fern, as a member of the commission, that he be given a hearing if his responsibility was questioned. Even in Wilson's testimony it does not appear that anything was made further than a personal request was made by Wilson to Fern for a hearing, so that for this purpose Fern was acting merely as a messenger of Wilson's to notify the commission that Wilson desired a hearing. * * * Consequently we submit that the allegation contained in the petition that Wilson demanded of the commission an opportunity to be heard, and that the commission refused to grant his request, has not been proved."

For Public, Not Bidder.

Dealing with the matter of whether the commission acted arbitrarily, corruptly or dishonestly, Mr. Sutton cites numerous cases relative to the subject in question. Towards the end of this section he quotes Dillon, one of the famous authorities on municipal law: "The provisions of the statute requiring the letting of bids to the lowest responsible bidder are enacted as a protection to the public and not for the benefit of the bidder, and hence the lowest bidder has no right of action to recover profits which he might have made had his bid been accepted, nor can he enjoin a violation of the charter provision."

Arguing on this Mr. Sutton goes on: "If this proposition stated by Dillon is true, then the lowest bidder, as

such, is not such an interested party as to require that he be given an opportunity to be heard respecting his ability to carry out the contract."

Further he says: "The authorities amply sustain us in the contention that a hearing of the lowest bidder to determine whether he is responsible is not necessary, and we submit that upon consideration of the question merely from the standpoint of reason it will be apparent that such a hearing is not requisite. The authorities are uniform in holding that the statutory provision in question was not designed for the benefit of bidders, but for the protection of the public, so that public work should not be held up and delayed by the failure of irresponsible bidders. * * * When the responsibility of the bidder is challenged there is no question but what the person for whom that bidder has done work is more likely to give a truthful estimate of that bidder than the bidder himself."

Reckless Underbidding.

"The question presented is not one of ascertaining whether a bidder has failed upon his work with a view to punishing that bidder for his failure, but only for the purpose of learning whether public work may be safely entrusted to him. In the present case, no one would contend for a moment that Wilson of his own accord would have called the commissioners' attention to the instances where he failed to carry out contracts by which, by his reckless underbidding, he had forced government officials to award to him. It is safe to assume instead that he would only have mentioned his successful work, and no one would blame him for such action, because Wilson or any other bidder would be working for his own interests and not for the public."

Hearing Not Necessary.

"If a hearing of Wilson regarding his responsibility would not bring out the fact of his irresponsibility any clearer than the commission could ascertain from other and unbiased sources, and if the requirement in question, awarding the contracts to the lowest responsible bidder, was made for the benefit of the public and not of the bidder, we submit that a hearing of the bidder is not required of the commission."

Further, Mr. Sutton contends that it does not follow that, merely because the duties of the commissioners are discretionary or "quasi-judicial" in their nature, consequently "judicial investigation" must be made with all that is implied from that term. Procedure such as followed in the courts would have to be followed, he continues, and witnesses would have to be sworn and to confront the person against whom the complaint is being made.

Hakalau Leads the List.

Sugar on hand and awaiting shipment at Hawaii ports as shown in the list brought by Purser Phillips of the steamer Kilaua includes the following consignments: Olua 13,900, Waikeia 18,900, Hawaii Mill 6200, Hilo Sugar Co. 14,900, Onomea 12,278, Pepee-keo 18,500, Honouliuli 13,000, Hakalau 21,400, Lanipahoehoe 16,000, Kailiki 3200, Kakaia: P. 2204, M. 3100; Hamakua Mill 9300, Paauhau 16,000, Honokaa 5000, Kukuhaele 6300, Punaia 10,420, Honnapo 8470.

Shipping at Island Ports.

The American-Hawaiian freighter Alaskan is taking on sugar at Hilo preparatory to getting away for Salina Cruz the first of the week with 12,000 tons sugar and sundries. The schooner E. K. Wood is ready for sea and is expected to sail from Hilo for the Sound today. The Inter-Island steamer Kanai was passed at Honouliuli and the Kailua was met at Pepee-keo. While at Mahukona the Kilaua officers report the schooner Melrose discharging lumber.

Announcement was made that the Rev. Charles F. Kavanaugh, chancellor of the archdiocese of Philadelphia, has been made a monsignor by the pope.

RESTORER OFFICERS REPAIR CABLE AMID DRENCHING SEAS

Four days' buffeting by angry seas, a little squad of Commercial Pacific Cable officials and experts succeeded in cementing the break in the thin line of communication between Midway and Guam Islands, not, however, without having encountered great hardship and much discomfort before the successful completion of the work.

The British cable ship Restorer, operated by the Commercial Pacific Cable Company, returned to Honolulu early this morning, and is now taking on coal and supplies preparatory to sailing for Esquimaux on or about Thursday.

It is just three weeks to a day since the gallant Restorer steamed into Honolulu harbor from the British Columbian station. The Restorer sailed from Honolulu on February 25th, arrived at Midway Island on March 1st, and four days later the Midway end of the heavy 2-inch steel-protected cable was raised and buoyed.

The "break" was located by a comparatively few miles west of Midway, according to statements made this morning. The cable had been completely severed so far as possible communication was concerned.

Gales and Heavy Seas Prevailed.

The broken cable lay in rather shallow water, which necessitated the work of raising the ends from smaller ship's boats. The shoal water was said to extend some ten miles off Midway Island in a westward direction and during the entire stay of the cable-repair squad there the nastiest sort of weather is said to have prevailed.

A heavy westerly swell made existence in the smaller boats anything but pleasurable. For three days the crews were unable to do much in the locating and grappling of the cable. The tempestuous seas greatly interfered with the efforts of the men to bring the cable to the surface. On March 4th the Midway end of the broken cable was buoyed and then the work of securing the Guam end was undertaken.

While this work was under way, frequent interruptions were imperative owing to the necessity for halting

out volumes of water from the boats.

Repairs Made on an Improvised Raft. Finally it was decided to construct an improvised raft made by lashing several small boats together. On a platform a number of experts worked like trojans with hardly a let-up in their endeavor to restore cable communication as quickly as possible.

Four days of this wearisome toil and the two ends were buoyed and a section of new cable spliced.

Tests made by the delicate instruments carried by the repair party indicated that all was well with the Midway end, and it was less than an hour's time that a similar test message was sent through to Guam. Fifteen minutes following the restoration of cable communication across the Pacific, a flood of business was rushed from Midway to Guam and thence on to Manila and other points in the Far East.

The completion of the job was signalized by some lusty cheering from the Restorer officers and men. While the work was being done the men were repeatedly drenched from angry seas which beat against the anchored raft upon which they labored with difficulty.

All Well at Midway.

All is well with the little colony of cable operators and employees at Midway Island, so report the officers in the Restorer. The health of the several members of the colony is pronounced very good. On board the Restorer are a number of cages of canary birds caught while the party remained on the island. They will be taken on to the mainland. The canaries are found in large numbers on the island.

The Restorer landed a quantity of supplies, the vessel having been accompanied by Captain Pittz of the schooner Florence Ward. The crew succeeded in catching a large quantity of fine, succulent fish during the time they lay off Midway Island. The Restorer's refrigerator is well stocked with piscatorial beauties as a result of the fishing expeditions.

INITIAL STEP TOWARD GREAT WIRELESS CHAIN

By C. S. ALBERT.
(Special Bulletin Correspondence.)
WASHINGTON, D. C., March 4.—The initial step toward securing a \$200,000 wireless tower for Honolulu has been taken. Secretary Meyer sent to the House an estimate for a chain of wireless stations connecting the insular possessions with the mainland and making direct communication possible at all times. He urged the appropriation of \$1,000,000 for establishing five stations.

It is intended to locate one of the towers at Honolulu. The plan provides for a structure 600 feet high and equipped with all the most modern appliances for wireless work.

MAJ. CHEATHAM DELAYED MONTH IN COMING HERE

Major H. Frank Cheatham, ordered here as chief quartermaster of the Department of Hawaii, will be a month later than expected in reporting in Honolulu. This information was contained in a personal letter from Major Cheatham to Captain Edwards, constructing quartermaster, which was received yesterday.

"Major Cheatham writes that he has obtained permission to delay his arrival here for one month," said Captain Edwards this morning. "This means that he will get here on the May transport from the Coast instead of on the April boat. In the meantime we are taking preliminary steps toward building the new barracks at Schofield. I have already advertised for bids for construction material, and when Major Cheatham arrives, things will be pretty well in hand."

Major Cheatham was president of the board that recently met in Washington to decide on the type of permanent barracks for Lefelua, so when he comes here to take charge of construction, he will be working on lines set down by himself. He is also interested in the "cement gun" which will be used in applying the reinforced concrete construction of the buildings.

At the present time Civilian Engineer Noot is at Schofield, doing preliminary work. Mr. Noot is an expert on water systems for military posts, and will have charge of this branch of the new construction.

DEMOCRATS OPPOSING FREE SUGAR

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In the Waverly building, with some seventeen members of the committee present personally or by proxy.

So far as the sugar tariff is concerned, the Democrats of Hawaii are for it, even though a Democratic House did pass yesterday afternoon a bill seeking to remove the tariff.

McClure opened the fight for the sugar tariff by presenting the resolution, and in discussing it he said:

"The Democratic party of Hawaii should go on record against tearing down the main industry of the Islands. We all realize that the sugar industry here can't live without assistance. The Democrats have passed a bill that is against this industry, and when the bill is pending in Congress the duty of the Democrats of Hawaii is to do the best we can to prevent its passage."

"I intended to introduce this resolution tonight, and have it carried to the House—had made arrangements to cable it, in fact—but the news this afternoon that the House passed the bill has closed the door against the necessity for that."

Eddie Hanapi said he thought this matter was too serious to be acted upon at once and moved to defer action to the next meeting, but McClure grabbed him and began to tell him emphatically just where he got off. Julius Asch seconded the resolution and the talk went on until Fern told the assembled Bourbons that the motion had been put and passed long ago.

NO NEED TO PROVE CORPORATION AUTHORITY

The Supreme Court this morning handed down a decision in connection with the case of the Fidelity Insurance Company, Limited, v. William Henry, being an appeal from the District Magistrate of Honolulu.

The syllabus states: "The appointment of an officer of a corporation may be proved by the testimony of the officer himself." The second point laid down is "In an action by a corporation before a district magistrate it is not incumbent upon the plaintiff to prove affirmatively that the institution of the action was authorized by the corporation, and a failure so to do is not ground for non-suit."

Wailele Back to Sugar Ports.

The Inter-Island steamer Wailele was dispatched for Honokaa and Kukuhaele at noon today, taking extensive shipments of lumber, coal and fertilizer for ports of call. The steamer will gather a quantity of sugar for transshipment at Honolulu.

Bulletin Want Ads will find it.



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